

AMENDED IN ASSEMBLY MARCH 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1554

Introduced by Assembly Member Skinner
(Coauthors: Assembly Members Atkins and Eggman)
(Coauthors: Senators Block and Corbett)

January 27, 2014

An act to amend Sections 1418.21, 1422.5, 1424, 1429, 1439, 1569.35; and 1569.37 of, and to add Section 1569.25 to, the Health and Safety Code, relating to ~~health~~ *care* facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1554, as amended, Skinner. ~~Long-term care facilities; residential~~ *Residential* care facilities for the elderly.

Existing law, the Long-Term Care, Health, Safety, and Security Act of 1973, establishes an inspection and reporting system and a provisional licensing mechanism, administered by the State Department of Public Health, to ensure that long-term health care facilities, as defined, are in compliance with state statutes, regulations, and federal standards pertaining to patient care. The act requires facilities to make certain information available to the public and specifies that records held by the department in connection with the act are public records. The Lanterman-Petris Short Act and the Lanterman Developmental Disabilities Services Act make confidential all records and information obtained in the course of providing intake, assessment, and services to persons with developmental disabilities and to voluntary or involuntary recipients of services.

This bill would specify that certain disclosure provisions of the Long-Term Care, Health, Safety, and Security Act of 1973 apply

~~notwithstanding the confidentiality provisions of the Lanterman-Petris Short Act and the Lanterman Developmental Disabilities Services Act.~~

Existing law, the California Residential Care Facilities for the Elderly Act, provides for the licensure of residential care facilities for the elderly by the State Department of Social Services. Existing law authorizes a person to request an inspection of a facility by transmitting notice of an alleged violation of law to the department. Existing law requires the department to review a complaint and conduct an onsite inspection within 10 days and requires the department to provide the substance of the complaint to the licensee no earlier than the time of the inspection.

This bill would make various changes to this complaint procedure, including prohibiting the department from disclosing the substance of the complaint to the licensee until the investigation is completed and requiring the department to make an onsite inspection within 24 hours of receiving a complaint where the complaint alleges abuse, neglect, or a threat of imminent danger. The bill would require the department to complete its investigation within 90 days of receiving a complaint, or within 30 days where the complaint alleges abuse, neglect, or a threat of imminent danger. The bill would authorize a complainant who is dissatisfied with the department's investigation, findings, or enforcement to file an appeal, as specified, and would require the department to inform the complainant of these appeal rights, as specified.

The bill would also specify that the names of any persons contained in the records of the department in connection with the California Residential Care Facilities for the Elderly Act are exempt from public disclosure, except for the names of the officers, employees, or agents of the department conducting an investigation or inspection in response to a complaint filed under the act.

Existing law prohibits a licensee from discriminating or retaliating in any manner against a person receiving the services of the licensee's residential care facility for the elderly, or against an employee of the licensee's facility, on the basis, or for the reason that, the person or employee or any other person has initiated or participated in the filing of a complaint, grievance, or a request for inspection with the department, or has initiated or participated in the filing of a complaint, grievance, or request for investigation with the appropriate local ombudsman, or with the state ombudsman.

This bill would require the department to ensure that a licensee complies with that provision.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1418.21 of the Health and Safety Code~~
2 ~~is amended to read:~~
3 ~~1418.21. (a) Notwithstanding Sections 4514 and 5328 of the~~
4 ~~Welfare and Institutions Code, or any other provision of law, a~~
5 ~~skilled nursing facility that has been certified for purposes of~~
6 ~~Medicare or Medicaid shall post the overall facility rating~~
7 ~~information determined by the federal Centers for Medicare and~~
8 ~~Medicaid Services (CMS) in accordance with the following~~
9 ~~requirements:~~
10 ~~(1) The information shall be posted in at least the following~~
11 ~~locations in the facility:~~
12 ~~(A) An area accessible and visible to members of the public.~~
13 ~~(B) An area used for employee breaks.~~
14 ~~(C) An area used by residents for communal functions, such as~~
15 ~~dining, resident council meetings, or activities.~~
16 ~~(2) The information shall be posted on white or light-colored~~
17 ~~paper that includes all of the following, in the following order:~~
18 ~~(A) The full name of the facility, in a clear and easily readable~~
19 ~~font of at least 28 point.~~
20 ~~(B) The full address of the facility in a clear and easily readable~~
21 ~~font of at least 20 point.~~
22 ~~(C) The most recent overall star rating given by CMS to that~~
23 ~~facility, except that a facility shall have seven business days from~~
24 ~~the date when it receives a different rating from CMS to include~~
25 ~~the updated rating in the posting. The star rating shall be aligned~~
26 ~~in the center of the page. The star rating shall be expressed as the~~
27 ~~number that reflects the number of stars given to the facility by~~
28 ~~CMS. The number shall be in a clear and easily readable font of~~
29 ~~at least two inches print.~~
30 ~~(D) Directly below the star symbols shall be the following text~~
31 ~~in a clear and easily readable font of at least 28 point:~~
32 ~~“The above number is out of 5 stars.”~~
33 ~~(E) Directly below the text described in subparagraph (D) shall~~
34 ~~be the following text in a clear and easily readable font of at least~~
35 ~~14 point:~~

1 “This facility is reviewed annually and has been licensed by the
2 State of California and certified by the federal Centers for Medicare
3 and Medicaid Services (CMS). CMS rates facilities that are
4 certified to accept Medicare or Medicaid. CMS gave the above
5 rating to this facility. A detailed explanation of this rating is
6 maintained at this facility and will be made available upon request.
7 This information can also be accessed online at the Nursing Home
8 Compare Internet Web site at
9 <http://www.medicare.gov/NHcompare>. Like any information, the
10 Five-Star Quality Rating System has strengths and limits. The
11 criteria upon which the rating is determined may not represent all
12 of the aspects of care that may be important to you. You are
13 encouraged to discuss the rating with facility staff. The Five-Star
14 Quality Rating System was created to help consumers, their
15 families, and caregivers compare nursing homes more easily and
16 help identify areas about which you may want to ask questions.
17 Nursing home ratings are assigned based on ratings given to health
18 inspections, staffing, and quality measures. Some areas are assigned
19 a greater weight than other areas. These ratings are combined to
20 calculate the overall rating posted here.”

21 (F) Directly below the text described in subparagraph (E), the
22 following text shall appear in a clear and easily readable font of
23 at least 14 point:

24 –
25 “State licensing information on skilled nursing facilities is
26 available on the State Department of Public Health’s Internet Web
27 site at: www.cdph.ca.gov, under Programs, Licensing and
28 Certification, Health Facilities Consumer Information System.”

29 –
30 (3) For the purposes of this section, “a detailed explanation of
31 this rating” shall include, but shall not be limited to, a printout of
32 the information explaining the Five-Star Quality Rating System
33 that is available on the CMS Nursing Home Compare Internet Web
34 site. This information shall be maintained at the facility and shall
35 be made available upon request.

36 (4) The requirements of this section shall be in addition to any
37 other posting or inspection report availability requirements.

38 (b) Violation of this section shall constitute a class B violation;
39 as defined in subdivision (c) of Section 1424 and, notwithstanding
40 Section 1290, shall not constitute a crime. Fines from a violation

1 of this section shall be deposited into the State Health Facilities
2 Citation Penalties Account, created pursuant to Section 1417.2.

3 (e) This section shall be operative on January 1, 2011.

4 SEC. 2. Section 1422.5 of the Health and Safety Code is
5 amended to read:

6 1422.5. (a) The department shall develop and establish a
7 consumer information service system to provide updated and
8 accurate information to the general public and consumers regarding
9 long-term care facilities in their communities. The consumer
10 information service system shall include, but need not be limited
11 to, all of the following elements:

12 (1) An on-line inquiry system accessible through a statewide
13 toll-free telephone number and the Internet.

14 (2) Long-term health care facility profiles, with data on services
15 provided, a history of all citations and complaints for the last two
16 full survey cycles, and ownership information. The profile for each
17 facility shall include, but not be limited to, all of the following:

18 (A) The name, address, and telephone number of the facility.

19 (B) The number of units or beds in the facility.

20 (C) Whether the facility accepts Medicare or Medi-Cal patients.

21 (D) Whether the facility has a special care unit or program for
22 people with Alzheimer's disease and other dementias, and whether
23 the facility participates in the voluntary disclosure program for
24 special care units.

25 (E) Whether the facility is a for-profit or not-for-profit provider.

26 (3) Information regarding substantiated complaints shall include
27 the action taken and the date of action.

28 (4) Information regarding the state citations assessed shall
29 include the status of the state citation, including the facility's plan
30 or correction, and information as to whether an appeal has been
31 filed.

32 (5) Any appeal resolution pertaining to a citation or complaint
33 shall be updated on the file in a timely manner.

34 (b) Where feasible, the department shall interface the consumer
35 information service system with its Automated Certification and
36 Licensure Information Management System.

37 (c) It is the intent of the Legislature that the department, in
38 developing and establishing the system pursuant to subdivision
39 (a), maximize the use of available federal funds.

~~(d) (1) Notwithstanding the consumer information service system established pursuant to subdivision (a), by January 1, 2002, the state department shall develop a method whereby information is provided to the public and consumers on long-term health care facilities. The information provided shall include, but not be limited to, all of the following elements:~~

~~(A) Substantiated complaints, including the action taken and the date of the action.~~

~~(B) State citations assessed, including the status of any citation and whether an appeal has been filed.~~

~~(C) State actions, including license suspensions, revocations, and receiverships.~~

~~(D) Federal enforcement sanctions imposed, including any denial of payment, temporary management, termination, or civil money penalty of five hundred dollars (\$500) or more.~~

~~(E) Any information or data beneficial to the public and consumers.~~

~~(2) This subdivision shall become inoperative on July 1, 2003.~~

~~(e) In implementing this section, the department shall ensure the confidentiality of personal and identifying information of residents and employees and shall not disclose this information through the consumer information service system developed pursuant to this section.~~

~~(f) The provisions of this section shall apply notwithstanding Sections 4514 and 5328 of the Welfare and Institutions Code or any other provision of law.~~

~~SEC. 3. Section 1424 of the Health and Safety Code is amended to read:~~

~~1424. Citations issued pursuant to this chapter shall be classified according to the nature of the violation and shall indicate the classification on the face thereof.~~

~~(a) In determining the amount of the civil penalty, all relevant facts shall be considered, including, but not limited to, the following:~~

~~(1) The probability and severity of the risk that the violation presents to the patient's or resident's mental and physical condition.~~

~~(2) The patient's or resident's medical condition.~~

~~(3) The patient's or resident's mental condition and his or her history of mental disability or disorder.~~

1 ~~(4) The good faith efforts exercised by the facility to prevent~~
2 ~~the violation from occurring.~~

3 ~~(5) The licensee's history of compliance with regulations.~~

4 ~~(b) Notwithstanding Sections 4514 and 5328 of the Welfare and~~
5 ~~Institutions Code, or any other provision of law, relevant facts~~
6 ~~considered by the department in determining the amount of the~~
7 ~~civil penalty shall be documented by the department on an~~
8 ~~attachment to the citation and available in the public record. This~~
9 ~~requirement shall not preclude the department or a facility from~~
10 ~~introducing facts not listed on the citation to support or challenge~~
11 ~~the amount of the civil penalty in any proceeding set forth in~~
12 ~~Section 1428.~~

13 ~~(c) Class "AA" violations are violations that meet the criteria~~
14 ~~for a class "A" violation and that the state department determines~~
15 ~~to have been a direct proximate cause of death of a patient or~~
16 ~~resident of a long-term health care facility. Except as provided in~~
17 ~~Section 1424.5, a class "AA" citation is subject to a civil penalty~~
18 ~~in the amount of not less than five thousand dollars (\$5,000) and~~
19 ~~not exceeding twenty-five thousand dollars (\$25,000) for each~~
20 ~~citation. In any action to enforce a citation issued under this~~
21 ~~subdivision, the state department shall prove all of the following:~~

22 ~~(1) The violation was a direct proximate cause of death of a~~
23 ~~patient or resident.~~

24 ~~(2) The death resulted from an occurrence of a nature that the~~
25 ~~regulation was designed to prevent.~~

26 ~~(3) The patient or resident suffering the death was among the~~
27 ~~class of persons for whose protection the regulation was adopted.~~

28 ~~If the state department meets this burden of proof, the licensee~~
29 ~~shall have the burden of proving that the licensee did what might~~
30 ~~reasonably be expected of a long-term health care facility licensee,~~
31 ~~acting under similar circumstances, to comply with the regulation.~~
32 ~~If the licensee sustains this burden, then the citation shall be~~
33 ~~dismissed.~~

34 ~~Except as provided in Section 1424.5, for each class "AA"~~
35 ~~citation within a 12-month period that has become final, the state~~
36 ~~department shall consider the suspension or revocation of the~~
37 ~~facility's license in accordance with Section 1294. For a third or~~
38 ~~subsequent class "AA" citation in a facility within that 12-month~~
39 ~~period that has been sustained, the state department shall commence~~

1 action to suspend or revoke the facility's license in accordance
2 with Section 1294.

3 (d) ~~Class "A" violations are violations which the state~~
4 ~~department determines present either (1) imminent danger that~~
5 ~~death or serious harm to the patients or residents of the long-term~~
6 ~~health care facility would result therefrom, or (2) substantial~~
7 ~~probability that death or serious physical harm to patients or~~
8 ~~residents of the long-term health care facility would result~~
9 ~~therefrom. A physical condition or one or more practices, means,~~
10 ~~methods, or operations in use in a long-term health care facility~~
11 ~~may constitute a class "A" violation. The condition or practice~~
12 ~~constituting a class "A" violation shall be abated or eliminated~~
13 ~~immediately, unless a fixed period of time, as determined by the~~
14 ~~state department, is required for correction. Except as provided in~~
15 ~~Section 1424.5, a class "A" citation is subject to a civil penalty in~~
16 ~~an amount not less than one thousand dollars (\$1,000) and not~~
17 ~~exceeding ten thousand dollars (\$10,000) for each and every~~
18 ~~citation.~~

19 If the state department establishes that a violation occurred, the
20 licensee shall have the burden of proving that the licensee did what
21 might reasonably be expected of a long-term health care facility
22 licensee, acting under similar circumstances, to comply with the
23 regulation. If the licensee sustains this burden, then the citation
24 shall be dismissed.

25 (e) ~~Except as provided in paragraph (4) of subdivision (a) of~~
26 ~~Section 1424.5, class "B" violations are violations that the state~~
27 ~~department determines have a direct or immediate relationship to~~
28 ~~the health, safety, or security of long-term health care facility~~
29 ~~patients or residents, other than class "AA" or "A" violations.~~
30 ~~Unless otherwise determined by the state department to be a class~~
31 ~~"A" violation pursuant to this chapter and rules and regulations~~
32 ~~adopted pursuant thereto, any violation of a patient's rights as set~~
33 ~~forth in Sections 72527 and 73523 of Title 22 of the California~~
34 ~~Code of Regulations, that is determined by the state department~~
35 ~~to cause or under circumstances likely to cause significant~~
36 ~~humiliation, indignity, anxiety, or other emotional trauma to a~~
37 ~~patient is a class "B" violation. A class "B" citation is subject to~~
38 ~~a civil penalty in an amount not less than one hundred dollars~~
39 ~~(\$100) and not exceeding one thousand dollars (\$1,000) for each~~
40 ~~and every citation. A class "B" citation shall specify the time within~~

1 ~~which the violation is required to be corrected. If the state~~
2 ~~department establishes that a violation occurred, the licensee shall~~
3 ~~have the burden of proving that the licensee did what might~~
4 ~~reasonably be expected of a long-term health care facility licensee,~~
5 ~~acting under similar circumstances, to comply with the regulation.~~
6 ~~If the licensee sustains this burden, then the citation shall be~~
7 ~~dismissed.~~

8 ~~In the event of any citation under this paragraph, if the state~~
9 ~~department establishes that a violation occurred, the licensee shall~~
10 ~~have the burden of proving that the licensee did what might~~
11 ~~reasonably be expected of a long-term health care facility licensee,~~
12 ~~acting under similar circumstances, to comply with the regulation.~~
13 ~~If the licensee sustains this burden, then the citation shall be~~
14 ~~dismissed.~~

15 ~~(f) (1) Any willful material falsification or willful material~~
16 ~~omission in the health record of a patient of a long-term health~~
17 ~~care facility is a violation.~~

18 ~~(2) "Willful material falsification," as used in this section, means~~
19 ~~any entry in the patient health care record pertaining to the~~
20 ~~administration of medication, or treatments ordered for the patient,~~
21 ~~or pertaining to services for the prevention or treatment of~~
22 ~~decubitus ulcers or contractures, or pertaining to tests and~~
23 ~~measurements of vital signs, or notations of input and output of~~
24 ~~fluids, that was made with the knowledge that the records falsely~~
25 ~~reflect the condition of the resident or the care or services provided.~~

26 ~~(3) "Willful material omission," as used in this section, means~~
27 ~~the willful failure to record any untoward event that has affected~~
28 ~~the health, safety, or security of the specific patient, and that was~~
29 ~~omitted with the knowledge that the records falsely reflect the~~
30 ~~condition of the resident or the care or services provided.~~

31 ~~(g) Except as provided in subdivision (a) of Section 1424.5, a~~
32 ~~violation of subdivision (f) may result in a civil penalty not to~~
33 ~~exceed ten thousand dollars (\$10,000), as specified in paragraphs~~
34 ~~(1) to (3), inclusive.~~

35 ~~(1) The willful material falsification or willful material omission~~
36 ~~is subject to a civil penalty of not less than two thousand five~~
37 ~~hundred dollars (\$2,500) or more than ten thousand dollars~~
38 ~~(\$10,000) in instances where the health care record is relied upon~~
39 ~~by a health care professional to the detriment of a patient by~~
40 ~~affecting the administration of medications or treatments, the~~

1 issuance of orders, or the development of plans of care. In all other
2 cases, violations of this subdivision are subject to a civil penalty
3 not exceeding two thousand five hundred dollars (\$2,500).

4 (2) ~~Where the penalty assessed is one thousand dollars (\$1,000)~~
5 ~~or less, the violation shall be issued and enforced, except as~~
6 ~~provided in this subdivision, in the same manner as a class “B”~~
7 ~~violation, and shall include the right of appeal as specified in~~
8 ~~Section 1428. Where the assessed penalty is in excess of one~~
9 ~~thousand dollars (\$1,000), or for skilled nursing facilities or~~
10 ~~intermediate care facilities as specified in paragraphs (1) and (2)~~
11 ~~of subdivision (a) of Section 1418, in excess of two thousand~~
12 ~~dollars (\$2,000), the violation shall be issued and enforced, except~~
13 ~~as provided in this subdivision, in the same manner as a class “A”~~
14 ~~violation, and shall include the right of appeal as specified in~~
15 ~~Section 1428.~~

16 Nothing in this section shall be construed as a change in previous
17 law enacted by Chapter 11 of the Statutes of 1985 relative to this
18 paragraph, but merely as a clarification of existing law.

19 (3) ~~Nothing in this subdivision shall preclude the state~~
20 ~~department from issuing a class “A” or class “B” citation for any~~
21 ~~violation that meets the requirements for that citation, regardless~~
22 ~~of whether the violation also constitutes a violation of this~~
23 ~~subdivision. However, no single act, omission, or occurrence may~~
24 ~~be cited both as a class “A” or class “B” violation and as a violation~~
25 ~~of this subdivision.~~

26 (h) ~~Where the licensee has failed to post the notices as required~~
27 ~~by Section 9718 of the Welfare and Institutions Code in the manner~~
28 ~~required under Section 1422.6, the state department shall assess~~
29 ~~the licensee a civil penalty in the amount of one hundred dollars~~
30 ~~(\$100) for each day the failure to post the notices continues. Where~~
31 ~~the total penalty assessed is less than two thousand dollars (\$2,000);~~
32 ~~the violation shall be issued and enforced in the same manner as~~
33 ~~a class “B” violation, and shall include the right of appeal as~~
34 ~~specified in Section 1428. Where the assessed penalty is equal to~~
35 ~~or in excess of two thousand dollars (\$2,000), the violation shall~~
36 ~~be issued and enforced in the same manner as a class “A” violation~~
37 ~~and shall include the right of appeal as specified in Section 1428.~~
38 ~~Any fines collected pursuant to this subdivision shall be used to~~
39 ~~fund the costs incurred by the California Department of Aging in~~
40 ~~producing and posting the posters.~~

1 (i) ~~The director shall prescribe procedures for the issuance of a~~
2 ~~notice of violation with respect to violations having only a minimal~~
3 ~~relationship to patient safety or health.~~

4 (j) ~~The department shall provide a copy of all citations issued~~
5 ~~under this section to the affected residents whose treatment was~~
6 ~~the basis for the issuance of the citation, to the affected residents'~~
7 ~~designated family member or representative of each of the~~
8 ~~residents, and to the complainant if the citation was issued as a~~
9 ~~result of a complaint.~~

10 (k) ~~Nothing in this section is intended to change existing~~
11 ~~statutory or regulatory requirements governing the ability of a~~
12 ~~licensee to contest a citation pursuant to Section 1428.~~

13 (l) ~~The department shall ensure that district office activities~~
14 ~~performed under Sections 1419 to 1424, inclusive, are consistent~~
15 ~~with the requirements of these sections and all applicable laws and~~
16 ~~regulations. To ensure the integrity of these activities, the~~
17 ~~department shall establish a statewide process for the collection~~
18 ~~of postsurvey evaluations from affected facilities.~~

19 SEC. 4. ~~Section 1429 of the Health and Safety Code is amended~~
20 ~~to read:~~

21 1429. (a) ~~Notwithstanding Sections 4514 and 5328 of the~~
22 ~~Welfare and Institutions Code, or any other provision of law, each~~
23 ~~class "AA" and class "A" citation specified in subdivisions (c) and~~
24 ~~(d) of Section 1424 that is issued, or a copy or copies thereof, shall~~
25 ~~be prominently posted for 120 days. The citation or copy shall be~~
26 ~~posted in a place or places in plain view of the patients or residents~~
27 ~~in the long-term health care facility, persons visiting those patients~~
28 ~~or residents, and persons who inquire about placement in the~~
29 ~~facility.~~

30 (1) ~~The citation shall be posted in at least the following locations~~
31 ~~in the facility:~~

32 (A) ~~An area accessible and visible to members of the public.~~

33 (B) ~~An area used for employee breaks.~~

34 (C) ~~An area used by residents for communal functions, such as~~
35 ~~dining, resident council meetings, or activities.~~

36 (2) ~~The citation, along with a cover sheet, shall be posted on a~~
37 ~~white or light-colored sheet of paper, at least 8 ½ by 11 inches in~~
38 ~~size, that includes all of the following information:~~

39 (A) ~~The full name of the facility, in a clear and easily readable~~
40 ~~font in at least 28-point type.~~

1 ~~(B) The full address of the facility, in a clear and easily readable~~
2 ~~font in at least 20-point type.~~

3 ~~(C) Whether the citation is class “AA” or class “A.”~~

4 ~~(3) The facility may post the plan of correction.~~

5 ~~(4) The facility may post a statement disputing the citation or~~
6 ~~a statement showing the appeal status, or both.~~

7 ~~(5) The facility may remove and discontinue the posting required~~
8 ~~by this section if the citation is withdrawn or dismissed by the~~
9 ~~department.~~

10 ~~(b) Each class “B” citation specified in subdivision (c) of Section~~
11 ~~1424 that is issued pursuant to this section and that has become~~
12 ~~final, or a copy or copies thereof, shall be retained by the licensee~~
13 ~~at the facility cited until the violation is corrected to the satisfaction~~
14 ~~of the department. Notwithstanding Sections 4514 and 5328 of the~~
15 ~~Welfare and Institutions Code, or any other provision of law, each~~
16 ~~citation shall be made promptly available by the licensee for~~
17 ~~inspection or examination by any member of the public who so~~
18 ~~requests. In addition, every licensee shall post in a place or places~~
19 ~~in plain view of the patient or resident in the long-term health care~~
20 ~~facility, persons visiting those patients or residents, and persons~~
21 ~~who inquire about placement in the facility, a prominent notice~~
22 ~~informing those persons that copies of all final uncorrected citations~~
23 ~~issued by the department to the facility will be made promptly~~
24 ~~available by the licensee for inspection by any person who so~~
25 ~~requests.~~

26 ~~(c) A violation of this section shall constitute a class “B”~~
27 ~~violation, and shall be subject to a civil penalty in the amount of~~
28 ~~one thousand dollars (\$1,000), as provided in subdivision (e) of~~
29 ~~Section 1424. Notwithstanding Section 1290, a violation of this~~
30 ~~section shall not constitute a crime. Fines imposed pursuant to this~~
31 ~~section shall be deposited into the State Health Facilities Citation~~
32 ~~Penalties Account, created pursuant to Section 1417.2.~~

33 ~~SEC. 5. Section 1439 of the Health and Safety Code is amended~~
34 ~~to read:~~

35 ~~1439. Notwithstanding Sections 4514 and 5328 of the Welfare~~
36 ~~and Institutions Code, or any other provision of law, any writing~~
37 ~~received, owned, used, or retained by the state department in~~
38 ~~connection with the provisions of this chapter is a public record~~
39 ~~within the meaning of subdivision (d) of Section 6252 of the~~
40 ~~Government Code, and, as such, is open to public inspection~~

1 pursuant to the provision of Sections ~~6253, 6256, 6257, and 6258~~
2 ~~of the Government Code. However, the names of any persons~~
3 ~~contained in such records, except the names of duly authorized~~
4 ~~officers, employees, or agents of the state department conducting~~
5 ~~an investigation or inspection in response to a complaint filed~~
6 ~~pursuant to this chapter, shall not be open to public inspection and~~
7 ~~copies of such records provided for public inspection shall have~~
8 ~~such names deleted.~~

9 ~~SEC. 6.~~

10 *SECTION 1.* Section 1569.25 is added to the Health and Safety
11 Code, to read:

12 1569.25. The names of any persons contained in the records
13 received, owned, used, or retained by the department in connection
14 with the provisions of this chapter, except the names of duly
15 authorized officers, employees, or agents of the department
16 conducting an investigation or inspection in response to a complaint
17 filed pursuant to this chapter, shall be exempt from disclosure
18 under the California Public Records Act (Chapter 3.5 (commencing
19 with Section 6250) of Division 7 of Title 1 of the Government
20 Code) and copies of the records provided for public inspection
21 shall have those names deleted.

22 ~~SEC. 7.~~

23 *SEC. 2.* Section 1569.35 of the Health and Safety Code is
24 amended to read:

25 1569.35. (a) A person may request an investigation of a
26 residential care facility for the elderly in accordance with this
27 chapter by making a complaint to the department alleging a
28 violation of applicable requirements prescribed by statutes or
29 regulations of this state. A complaint may be made either orally
30 or in writing.

31 (b) (1) Upon receipt of a complaint, the department shall make
32 a preliminary review. Within two working days of receiving the
33 complaint, the department shall notify the complainant of the name
34 of the officer, employee, or agent of the department who will
35 conduct the investigation. Unless the department determines that
36 the complaint is willfully intended to harass a licensee or is without
37 any reasonable basis, it shall make an onsite inspection within 10
38 days after receiving the complaint.

39 (2) Notwithstanding paragraph (1), when a complaint alleges
40 abuse, neglect, or a threat of imminent danger of death or serious

1 harm, the department shall make an onsite inspection within 24
2 hours of the receipt of the complaint.

3 (3) Notwithstanding paragraph (1), when a complaint alleges
4 denial of a statutory right of access to a residential care facility for
5 the elderly under Section 9722 of the Welfare and Institutions
6 Code, the department shall immediately review the complaint,
7 confer with the Office of the State Long-Term Care Ombudsman,
8 and notify the complainant of the department's proposed course
9 of action.

10 (4) Prior to conducting an onsite inspection pursuant to this
11 section, the officer, employee, or agent of the department who will
12 conduct the inspection shall contact and interview the complainant
13 and inform the complainant of the department's proposed course
14 of action.

15 (c) The department shall coordinate its investigation of a
16 residential care facility for the elderly under this section with the
17 investigation of the facility by other agencies, including, but not
18 limited to, the Office of the State Long-Term Care Ombudsman
19 and law enforcement agencies.

20 (d) The substance of the complaint shall not be disclosed to the
21 licensee until the completion of the investigation. Unless the
22 complainant specifically requests that his or her own name is
23 released, neither the substance of the complaint provided to the
24 licensee, nor any copy of the complaint or any record published,
25 released, or otherwise made available to the licensee shall disclose
26 the name of the complainant or the name of any person mentioned
27 in the complaint, except the name of a duly authorized officer,
28 employee, or agent of the department conducting the investigation
29 or inspection pursuant to this chapter.

30 (e) When conducting an onsite inspection pursuant to this
31 section, the department shall interview any residents who are the
32 subject of the complaint. Additionally, the officer, employee, or
33 agent of the department conducting the inspection shall collect
34 and evaluate all available evidence, including, but not limited to,
35 all of the following:

36 (1) Observed conditions.

37 (2) Statements of witnesses.

38 (3) Interviews with administration, staff, other residents, family
39 members, visitors, the long-term care ombudsman, and other

1 individuals or agencies that provide services at the facility or have
2 information about the complaint.

3 (4) Records from the facility and any other relevant sources.

4 (f) The department shall complete its investigation within 90
5 days of receiving the complaint. Investigation of a complaint
6 alleging abuse, neglect, or a threat of imminent danger of death or
7 serious harm shall be completed within 30 days of receiving the
8 complaint.

9 (g) Within 10 days of completing the investigation of a
10 complaint under this section, the department shall notify the
11 complainant in writing of the department's determination as a
12 result of the investigation and of the complainant's right to appeal
13 the findings. The written notice shall describe the appeal process
14 provided for under subdivision-~~(i)~~ (h) and include a copy of any
15 reports and documents describing violations and enforcement
16 actions resulting from the investigation.

17 (h) (1) A complainant who is dissatisfied with the department's
18 investigation, findings, or enforcement actions resulting from the
19 investigation may file an appeal by notifying the program manager
20 of the officer, employee, or agent of the department conducting
21 the inspection in writing within 15 days after receiving the notice
22 described in subdivision (g). The program manager shall schedule
23 a meeting or teleconference with the complainant within 30 days
24 of receiving an appeal. The program manager shall carefully review
25 the concerns, information, and evidence presented by the
26 complainant to determine whether the department's findings or
27 actions should be modified or whether further investigation is
28 necessary. Within 10 days after conducting the meeting or
29 teleconference with the complainant, the program manager shall
30 notify the complainant in writing of the department's
31 determinations and actions concerning the appeal and of the appeal
32 rights provided in paragraph (2).

33 (2) If a complainant is dissatisfied with the program manager's
34 determination on an appeal, the complainant may, within 15 days
35 after receipt of this determination, file an appeal in writing with
36 the department's Deputy Director of the Community Care
37 Licensing Division. Within 30 days of receiving an appeal, the
38 deputy director or his or her designee shall interview the
39 complainant, consider any information presented or submitted by
40 the complainant, and review the complaint record to determine

1 whether the department's findings or actions should be modified
2 or whether further investigation is necessary. No later than 10 days
3 after completing this review, the deputy director shall notify the
4 complainant in writing of the department's determinations and
5 actions concerning the appeal.

6 (3) A complainant may be assisted or represented by any person
7 of his or her choice in the appeal process described in this
8 subdivision.

9 ~~SEC. 8.~~

10 *SEC. 3.* Section 1569.37 of the Health and Safety Code is
11 amended to read:

12 1569.37. (a) No licensee, or officer or employee of the licensee,
13 shall discriminate or retaliate in any manner, including, but not
14 limited to, eviction or threat of eviction, against any person
15 receiving the services of the licensee's residential care facility for
16 the elderly, or against any employee of the licensee's facility, on
17 the basis, or for the reason that, the person or employee or any
18 other person has initiated or participated in the filing of a
19 complaint, grievance, or a request for investigation with the
20 department pursuant to this chapter, or has initiated or participated
21 in the filing of a complaint, grievance, or request for investigation
22 with the appropriate local ombudsman, or with the state
23 ombudsman recognized pursuant to Chapter 11 (commencing with
24 Section 9700) of Division 8.5 of the Welfare and Institutions Code.

25 (b) The department shall ensure that a licensee or officer or
26 employee of the licensee complies with subdivision (a).

27 ~~SEC. 9.~~

28 *SEC. 4.* The Legislature finds and declares that Section-~~6~~ 1 of
29 this act, which adds Section 1569.25 to the Health and Safety Code,
30 imposes a limitation on the public's right of access to the meetings
31 of public bodies or the writings of public officials and agencies
32 within the meaning of Section 3 of Article I of the California
33 Constitution. Pursuant to that constitutional provision, the
34 Legislature makes the following findings to demonstrate the interest
35 protected by this limitation and the need for protecting that interest:

36 In order to protect the identity of individual residents and
37 employees of residential care facilities for the elderly, the

- 1 limitations on the public's right of access imposed by Section ~~6~~ *1*
- 2 of this act are necessary.

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